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ABSTRACT

For over a decade, school administrators and school attorneys have been struggling with the appropriate procedures to follow in disciplining public school children. Many articles have been written concerning due process. This publication focuses not on the legal history of school discipline cases, but on the implementation and administration of viable school discipline policies and suspension procedures. After a short legal background section, the development of policies is discussed. Next, the procedures for investigating and "prosecuting" a school discipline case are reviewed. The conduct of discipline hearings is also explained. Finally, a specific school discipline problem, the discipline of handicapped students, is analyzed. Fairness is essential in handling all student discipline cases. A listing of cases and articles on student discipline is included. The sample policies and procedures presented in the appendices are generally based upon Texas law and the decisions of the Fifth Circuit Court of Appeals. Appendices A through C contain sample suspension, discipline, and drug and alcohol policies. Appendix D contains various specimen letters, orders, and outlines related to adopted discipline policies and procedures. (MLH)

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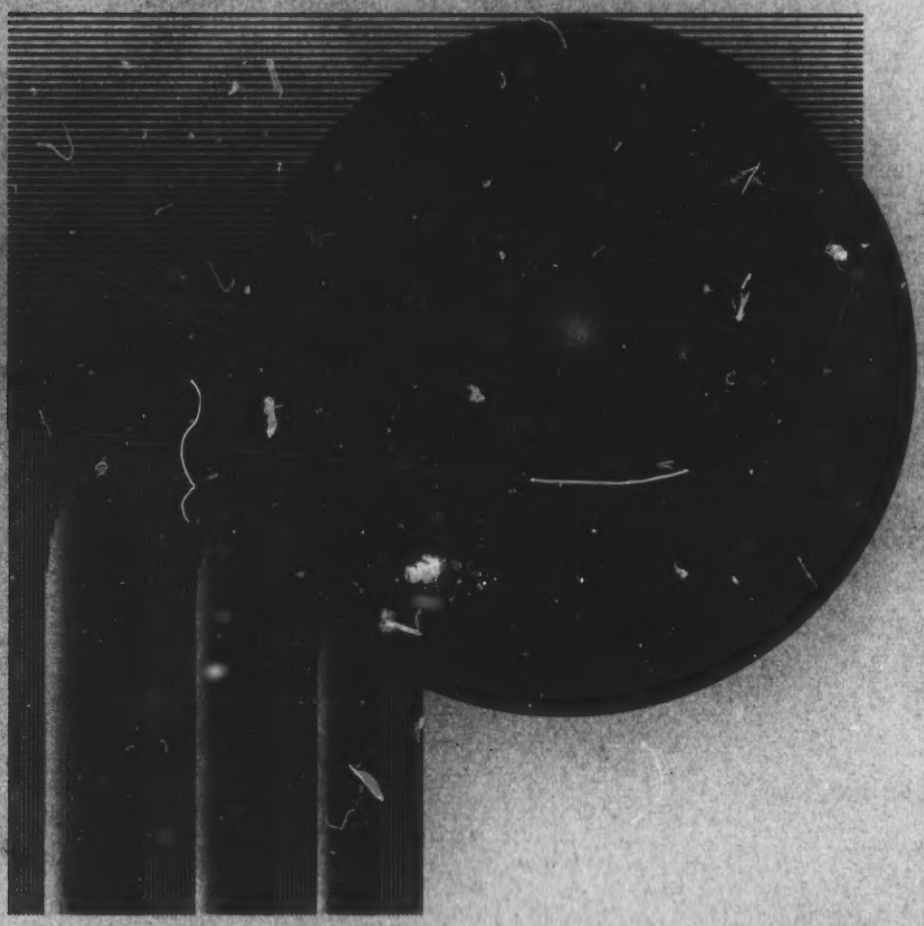

School Discipline Policies and Procedures:

A Practical Guide — Revised Edition

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SCHOOL DISCIPLINE POLICIES AND PROCEDURES:

A PRACTICAL GUIDE

Revised Edition

Kelly Frels, Jeffrey J. Horner
and Merri Schneider-Vogel
Bracewell & Patterson
Houston, Texas

April 1990

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FOREWORD

For over a decade, school administrators and school attorneys have been struggling with the appropriate procedures to follow in disciplining public school children. Many articles have been written concerning due process. This publication will not dwell upon the legal history of school discipline cases. Rather, its focus will be upon the implementation and administration of viable school discipline policies and the procedures for suspension. After a short section on legal background, the development of policies will be discussed. Third, the procedures for investigating and "prosecuting" a school discipline case will be reviewed. Fourth, the conduct of discipline hearings will be explained. Finally, some specific school discipline problems will be analyzed.

The sample policies and procedures which are presented in the appendices to this publication are generally based upon Texas law and the decisions of the Fifth Circuit Court of Appeals. While the authors believe that the proposed policies generally reflect principles of law which are applicable to all parts of the country, they must be used with care and must include any modifications necessary to conform to the requirements of local laws or regulations and local court decisions. The information presented is not intended to be legal advice, and the reader should consult legal counsel for advice on specific student discipline issues.

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SCHOOL DISCIPLINE POLICIES AND PROCEDURES: A PRACTICAL GUIDE

Revised Edition

INTRODUCTION

The school setting has been recognized by the courts as a special setting in which school officials are granted a broader range of powers in maintaining an orderly environment than is applicable in society generally. The courts have, however, also required that school officials adhere to constitutional standards and the requirements of due process. A complaint often made by school administrators and school board members is that the federal courts have emasculated school officials' power in dealing with school discipline problems. While this may seem to be the case, the courts have not taken away the power to establish and enforce rules. The method of enforcement has generally been the focus of the federal courts' attention.

In recognizing that state legislatures and school officials have a broad range of authority to determine offenses and punishments, the courts have required that the rules and possible punishments be stated sufficiently for the student to understand what types of conduct could result in disciplinary action. The rules do not have to be drawn with the specificity of criminal statutes, but they do need to be specific enough to inform the student of prohibited conduct. Again, it is the procedural aspect of the rules with which the courts have generally been the most concerned, not the substantive content. Unless the rules are arbitrary and capricious as a matter of law, or they are so vague that a reasonable person must guess at their meaning, the courts generally do not disturb the choices made by school officials. Those choices represent a part of the individual school district's overall philosophy of education and are routinely upheld.

One of the recurring school discipline issues is the extent of the school's jurisdiction over students. That is, where does the school's jurisdiction extend and when does it apply? Clearly, a school district could not punish a student for drinking alcoholic beverages in the privacy of his or her home at night just prior to going to bed. Just as clearly, the school district can punish a student who drinks an alcoholic beverage while at school. What about the student, however, who goes off campus at the noon hour and purchases and consumes an alcoholic beverage at the corner convenience store? Or what happens to the student who, after receiving a bad grade on a test, vandalizes the home of the teacher who gave the student the poor grade?

In order to maintain order on the school campus, the school administration must be able to regulate more than simply the activities which occur on the campus itself. While the law may vary with respect to different state statutes and regulations or circuit court decisions, a school district may generally enforce its disciplinary regulations with respect to those activities which may affect the missions and operations of the school district or endanger the safety and welfare of students and employees. To help insure that students are aware that such off-campus activity may be subject to school discipline rules, a statement of jurisdiction should be included in school discipline policies. In Appendix A, the sample suspension policy states:

> These policies and regulations apply to any student who is on school property, who is in attendance at school or at any school sponsored activity or whose con-

duct at any time or any place interferes with or obstructs the missions or operations of the school district or the safety or the welfare of students or employees.

This statement is also included in the Sample Discipline Policy (Appendix B), and in the Sample Drug and Alcohol Policy (Appendix C). This statement makes clear that the student activity which may have an effect on the school may be punished. Such a statement of policy should help clarify the extent of a school district's jurisdiction.

LEGAL BACKGROUND

Most public school districts have formal policies and rules specifically covering student discipline. These policies have often been the subject of lawsuits. The primary legal issues which courts have considered regarding student discipline include corporal punishment, due process, first amendment, search and seizure and the discipline of the handicapped questions. The courts have attempted to balance the constitutional rights of students against the need of school officials to maintain discipline and order in the schools.

Corporal Punishment

Corporal punishment has been a way of life in the public schools for generations. States have taken different approaches to the question of whether corporal punishment should be allowed. Some states allow it, other states forbid it and some states leave the question up to the individual school district and/or the parents. The constitutional interpretation involving corporal punishment is that its administration is legally permissible, although certain guidelines must be followed in order to make the imposition of such punishment reasonable. For example, in *Baker v. Owen,* 423 U.S. 907 (1975), the United States Supreme Court upheld the use of corporal punishment and did not require prior parental approval. However, it suggested that several guidelines should be followed before using this form of punishment, including the provision that corporal punishment should not be a "first line" punishment and various school officials should be present to witness the act.

Another controlling case involving corporal punishment is *Ingraham v. Wright,* 430 U.S. 651 (1977). In *Ingraham,* the Supreme Court determined that corporal punishment did not fall within the Eighth Amendment prohibition on cruel and unusual punishment. It stated that the Eighth Amendment applies only in criminal cases. In addition, the Court held that with respect to due process, a student is not entitled to notice and a hearing prior to corporal punishment. Thus, the courts allow corporal punishment that is reasonably administered by school officials.

Procedural Due Process

School districts clearly have the right to exclude any student whose behavior disrupts the educational process or poses a danger to other people. However, due process considerations enter into any decision to exclude a student from school for disciplinary reasons. Lawyers have often argued that in many circumstances, notice and a hearing is necessary prior to the imposition of punishment which would result in a student's exclusion from school. The primary case concerning this issue is the United States Supreme Court case of *Goss v. Lopez,* 419 U.S. 565 (1975).

In *Goss,* the Supreme Court determined that, where access to education is provided by state law, minimum procedural safeguards are necessary for short term suspensions of ten days or fewer. In these circumstances, the student must only be informed of the charges against him or her and be given an opportunity to present his or her side of the story. After this is accomplished, the school officials may take any action deemed reasonable. Without giving specific guidance on the nature of safeguards, the Court did observe that more procedural due process may be needed for longer suspensions. School districts now generally require that long term suspensions be accomplished with procedures which would allow students to be represented by counsel, present witnesses, and confront or cross-examine the school district's witnesses.

Under these guidelines, school officials may be subject to state requirements that prescribe the process to be afforded a student in disciplinary proceedings. These additional safeguards could include an appeal to the school board through a local administrative process, possible

appeal to a central administrative agency within the state, and other safeguards.

First Amendment Concerns

Student expression in the schools usually involves the balancing of the students' right to freedom of expression against the school's right to maintain discipline and order. In the landmark case of *Tinker v. Des Moines,* 393 U.S. 503 (1969), the United States Supreme Court held that the First Amendment applies to students enrolled in public schools. This protection has not been taken to extremes by the Court, however. In a 1986 case on student speech at a school assembly and a 1988 case regarding the contents of student newspapers, the Supreme Court ruled against the students and in favor of administrative limitation on student speech. *Bethel School District v. Fraser,* 478 U.S. 675 (1986) (school assembly case); *Hazelwood School District v. Kuhlmeier,* 484 U.S. 260 (1988) (newspaper case).

In general, these cases stand for the proposition that when a student speaks as an individual, school officials cannot censor such expression unless it causes a substantial disruption to the educational process. Conversely, school administrators have broad discretion in regulating student speech that is connected to the school curriculum or school activities.

Search and Seizure

The seminal case on search and seizure is *New Jersey v. TLO,* 469 U.S. 325 (1985). In this case, the Supreme Court examined whether the Fourth Amendment prohibition on illegal searches and seizures applies in the school setting. The Court held that the Fourth Amendment does apply in the school setting, but to a lesser degree than that applicable to searches by law enforcement agencies. The police are guided by the probable cause standard, in which searches cannot be made without probable cause. Under *T.L.O.*, school officials are subject to a lesser standard—that of *reasonable suspicion.* That is, if a school official reasonably suspects through articulable facts that the rules of the school or laws of the jurisdiction have been violated, then a reasonable search can be made to determine whether proof of such a violation is present. The search should be reasonable in light of the age and experience of the student and the nature of the alleged infraction. *T.L.O.* imposes a lesser standard on school officials so school discipline can be reasonably maintained.

Special Education Concerns

The discipline of handicapped students is an area heavily regulated by state law. The Supreme Court, however, recently addressed the issue of appropriate disciplinary action in *Honig v. Doe,* 484 U.S. 305 (1988). In *Honig*, the Court held that school officials are prohibited from unilaterally excluding handicapped students for more than ten days for conduct arising from their disability, even when they become dangerous to themselves or others around them. The legal effect of *Honig* and other cases will be more thoroughly examined later in this monograph.

In general, the discipline of handicapped students requires even greater care than regular classroom students, because both state law and cases such as *Honig* establish additional procedural restrictions on the discipline of students.

Conclusion

These legal standards should be considered in the discipline of students. While this section provides a brief overview of the law in this area, the following will provide discipline policies and procedures to be used as a practical guide in dealing with student discipline matters.

POLICY DEVELOPMENT

The four appendices cover the major policy areas which should be addressed in a school discipline policy. The first policy is the Sample Suspension Policy attached as Appendix A. That policy sets out the procedures for the suspension of a student. It first establishes the bases for suspension and then delineates the procedures which must be followed for either a short term (ten school days or fewer) or long term (more than ten school days) suspension.

The second policy is the Sample Discipline Policy attached as Appendix B. It is a policy concerning specific behaviors which may or may not be suitable for use in a particular school district, depending upon its needs, the local laws and regulations, and the various court decisions gov-

erning that school district. As noted previously, such a policy need not list every single offense which might be subject to discipline, but the policy does need to inform the student of categories of conduct specifically enough to place the student on notice of the type of conduct which may cause discipline to be imposed. These rules should be included in board policy, and they should also be posted at the school and/or included in the student handbooks and distributed to the students at the beginning of each school year.

Often, students have claimed that they were not aware of certain rules or the possible punishments for violation of those rules. The rules should be discussed with the students at the outset of the school year. Some districts have found it beneficial to have each student and his or her parent or guardian sign an acknowledgement sheet indicating receipt of the student handbook and discipline rules. Some districts also require the student and his or her parent or guardian to also acknowledge that he or she has read the rules and understands that a violation of these rules may lead to the imposition of discipline. This process has proven successful when a student or parent claims that he or she was not advised of the district's discipline procedures.

Appendix C contains the Sample Drug and Alcohol Policy. As with the general policy, this policy applies to any student whose activities at any time or in any place may affect the school district. Also, the policy delineates a broad range of prohibited activities. It was felt that these activities need to be stated in some detail to cover the many situations which can arise in the school setting. The prohibited substances and penalties for the various activities regarding those substances are, again, merely suggestive. A drug and alcohol policy which will serve the specific needs of the local district can be developed from this sample policy. The drug and alcohol problem has become increasingly important in the last several years, and the special problems presented by such cases will be discussed later.

GENERAL PROCEDURES FOR DISCIPLINE CASES

Short-Term Suspension

Generally, the first step in a student discipline case is the investigation. Often, a complaint of student misconduct comes to an assistant principal. For example, a teacher may come in and report that a student has assaulted another student on the playground. After receiving such a report from the teacher, it is standard procedure for the administrator to talk to the student accused of the misconduct and ask him or her whether the student committed the act in question. In this discussion, the student is given the opportunity to give his or her side of the story. After these initial discussions, the administrator may feel that he or she has enough information to make a determination. If it is determined that there is not enough information, or more information is desired, the administrator might want to talk to other students or teachers who might have been witnesses to the event. This process is the "hearing" contemplated by *Goss v. Lopez*, for short term suspensions.

If it is finally determined that the student committed the act(s) and that the incident warrants a short-term suspension, one may be imposed by the administrator. A notice should be sent home to the parent describing the nature of the misconduct and the punishment imposed (Specimen Letter #1). All specimen letters are contained in Appendix D.

Long-Term Suspension

If the investigation reveals that the conduct could warrant a long-term suspension under the policies (more than ten school days) and the state law allows such long term suspension, the student may be suspended for up to ten (10) school days if the previously discussed procedures are followed. A letter should be sent home outlining the charges against the student and informing the student and his or her parents of their rights under board policy and the law (Specimen Letter #2). Specimen Letter #2 informs the parent and the student of the charges and informs them of their rights with respect to a hearing. The last paragraph of that letter states (in bold face): "A COPY OF THE SCHOOL DISTRICT POLICIES RE-

GARDING DISCIPLINE PROCEDURES IS ATTACHED TO THIS LETTER. PLEASE REVIEW THESE POLICIES." Once again, it is helpful to have this language in a letter to dispel any claims that the parent was uninformed of the procedures and possibilities for administrative relief.

The next step is to see if the student or parents want a hearing. If the student and/or his or her parents request that a hearing be held, a letter notifying them of a hearing date and of the witnesses and the nature of their testimony must be sent (Specimen Letter #3). The letter should also detail the general ground rules for the hearing and notify the student and parent that they are entitled to have an attorney or other adult representative at the hearing.

All of the letters which are sent should be either hand delivered or sent by certified mail to help assure that no claim is made that notice was not received.

THE HEARING PROCESS

There are many different ways for school districts to handle the hearing process for long-term suspensions or expulsions. For example, many school districts provide that hearings concerning student discipline be held initially before the school board. Others provide that an upper level administrator hear the case. Virtually all districts which have the policy have found that all parties are generally best served if the building principal conducts the hearings in the first instance. However, local statutes or policies may preclude such an approach. For example, some state laws require that long term suspension hearings be held initially before the school board. State laws and local policies should be examined prior to implementation of any discipline procedures.

There are several benefits which may arise from having the building principal responsible for the initial hearing. Having the principal hold the hearing helps assure that due process is afforded the student at the earliest time and at the lowest administrative level. Also, a relatively speedy appellate process is provided. Communication at this level is generally easier than when a hearing is held before the superintendent or at the board level. The chances of misunderstandings are reduced. Furthermore, holding a hearing at the principal's level will, in many instances, foreclose any request for an appeal to the school board. That, in turn, will assure that the board spends less time in disciplinary hearings and more time concentrating upon educational issues which are of greater benefit to all students.

There may be less likelihood of attorney involvement at lower level hearings. The absence of attorneys may, in many instances, assist in the resolution of cases without the need for long, protracted hearings and other proceedings. Conversely, sometimes an independent person such as an attorney can help the parent or student understand his or her legal position.

Another benefit of holding the hearings at the building level inures to the principal himself or herself. The principal is the person who is in charge of the school building. Study after study has shown that the principal's leadership sets the tone for a school building and the performance of those who work and learn in it. By having the principal make decisions regarding discipline, his or her authority and leadership role are enhanced. Furthermore, the administration is placed in a position of having to assure that due process procedures are followed. By having this process repeated over and over, fewer mistakes will be made and the likelihood of a school district's appearing in court over procedural problems is minimized.

Because the student is entitled to a fair hearing, the principal should avoid talking in great detail to those investigating the case. Of course, there may be cases where the principal is so involved in the investigation of a case that he or she cannot legitimately serve as an impartial hearing officer. In such cases, the principal may request that the superintendent appoint another administrator to hear the case. The hearing should be held before an administrator who has no preconceived notions or information about the case. While this procedure may have to be followed in certain cases, many have found that it is best to have the principal hear student discipline cases whenever possible.

Some districts may choose, as an alternative, to have an administrative panel hear all long-term suspension cases in order to allow the principal to have a freer hand to investigate and prosecute all discipline cases. When this option is chosen, the principal may present the evidence of the student's misconduct. The specimen notices contained in this monograph can be easily adapted to utilize this approach.

PROCEDURES FOR CONDUCTING A DUE PROCESS HEARING

Once a decision is made about who will hear the case, the procedures for such a hearing must be determined. Many people are fearful of conducting or participating in a hearing. Actually, the procedures are quite simple. In the hearing, the principal (assuming he or she will hear the case) will preside and present the ground rules. The procedures for a hearing at the building level are attached as Specimen Outline #4.

The first step in the hearing is for the principal to state the ground rules. The principal can read the outline (Specimen Outline #4) with any appropriate additions to cover the specific case at hand. This outline should be handed out to all those in attendance so everyone will be apprised of the ground rules.

Because the student is entitled to a fair hearing, the principal should avoid talking in detail to those investigating the case. There are several things about a hearing which should be noted. The administration, usually the assistant principal, has the burden to go forward and present the administration's case that the student violated a rule and should be suspended. If the student has an attorney at the hearing, the district may wish to have the school district's attorney there to represent the administration and present its case. Most administrators find that, after conducting one or more hearings, they can handle the hearing without the school district's attorney even when the student is represented by an attorney.

The principal should have the proceeding recorded, either by tape or a court reporter. The tape recording can later be used for an appeal to the superintendent, the board and eventually to prepare a transcript if the case is appealed to the courts. The principal should assure that the taping system is a good one which will pick up all voices. If the case appears to be a particularly difficult one, a court reporter might be preferable to a tape recording. In the usual case, however, a tape recording should be sufficient because the recording can be transcribed in the event of an appeal.

The administration should begin the proceeding by presenting its case. The student, his or her parent, their representative, or their attorney, should be allowed to cross-examine the witnesses presented by the administration. The cross-examination should generally be allowed to go on for as long as the parents or their representative feels it is necessary. Time limits are not a good idea and simply raise the specter of unfair treatment. The principal, however, may require that witnesses' testimony be relevant and that hearsay be avoided. In that regard, a principal should not rely solely on hearsay to make his or her determination of whether the student committed the act(s) in question.

After the administration has presented its witnesses and evidence, the student should then present his or her witnesses. Once again, time limits should generally not be placed on the presentation by the student; however, the principal may impose reasonable restrictions with respect to relevance and hearsay. With respect to hearsay, it should be noted that the principal or hearing officer is not expected to be an attorney. Rulings can be made after listening to each side make its objections with respect to the presentation of hearsay. If the hearing officer or principal has doubt about the admission of any evidence, it is better to err on the side of admitting the evidence.

After all the evidence has been presented, the principal should allow rebuttal evidence and then closing arguments. After the presentation of the arguments, the principal may deliberate and render a decision later or he or she may render a decision at that time. Any oral decision which is made at the time of the hearing should be followed up in writing to explain the basis for the decision.

The notification letter informs the parent and student of the decision and of their right to appeal to the next administrative level (Specimen Letter #5). The principal should make specific findings of fact about the incident in question. That is, the principal should state what he or she believes happened and what policy, if any, has been violated. Sometimes, this finding will involve believing one witness' testimony over another's. Such a determination must be made because the principal is acting in the role of judge in the case. The principal should also set out independently in the finding the appropriate punishment for any offenses which the principal finds that the student committed.

APPEALS TO THE SUPERINTENDENT AND THE BOARD

If the principal determines that a student committed the act(s) in question and that suspension is the appropriate punishment, the student should be allowed to appeal to the next administrative level, e.g., the superintendent and then to the board. The appeal to the next level can be based upon the record made before the principal or other hearing officer. That is, the superintendent or other administrator can listen to the tape recording or read a transcript of the proceedings and review any documents presented to the principal or hearing officer. Based upon that review and any further argument by the administration and the pupil's representative, the superintendent can make his or her ruling. A *de novo* hearing may, of course, be held at the superintendent's level where all the evidence is again presented. This depends upon local policy. However, an appellate process based upon a record developed at the initial hearing state is recommended. Economy and time savings are promoted by a process which avoids a repeat of evidentiary hearings.

The Specimen Letter #6 provides notice to the student and his or her parent of the hearing before the superintendent. Specimen Outline #7 suggests a procedure for the hearing before the superintendent. The hearings may also be based on oral argument. The procedure is basically the same as the prior hearing, except that no new evidence should be allowed unless that evidence was not known at the time of the hearing before the principal. The superintendent would then make his or her determination in the same way that the principal made his or her determination in the initial hearing. Once the superintendent has made his or her determination, Specimen Letter #8 can be sent to inform the parent and student of the superintendent's decision. Once again, it is appropriate for the superintendent to make his or her decision either at the time of the hearing or at a later time.

If the student submits an appeal to the board, Specimen Letter #9 should be sent. Once again, that letter establishes the general procedures and states the witnesses who will be used at the board hearing (unless the board hearing is based on the previously developed record). In the specimen policy, it is contemplated that the hearing before the board will be a completely new hearing. That is, the witnesses will have to testify again and will have to be available. Specific local requirements or statutes may necessitate modification of this step. The outline of the hearing before the board is attached as Specimen Outline #10, which is to be read by the board president while conducting the hearing. Once again, this outline should be provided to all parties so everyone will know what the procedures will be. These procedures are merely suggested procedures and may, of course, be changed to meet the circumstances of each individual school district. It is suggested that the school use an attorney at the board hearing if the student has an attorney.

In Specimen Outline #10, it is suggested that each side be asked to present proposed motions to the board. The school's attorney or the superintendent (whoever is presenting the case) should present proposed findings of fact and conclusions to the board. These findings can be simple, and may track those made at the principal's and superintendent's level if the evidence supports them. These proposed findings should state that the board finds the student committed the acts of which he or she was charged and that the board finds that the punishment they desired to impose is appropriate. This should be stated in the form of a motion upon which the board should vote.

Once the vote is taken, a letter should be written to the parent and student formally notifying the parent and student of the board's decision. If the board finds that the student committed the acts and was punished, the board should state in its letter that the motion was passed. The student and his or her parent or guardian will then have the right to appeal to the commissioner of education, the state courts or the federal courts, depending upon the jurisdiction in which the school district sits.

If the student and his or her parent do not request a hearing, Specimen Order #12 provides a notification to the student and his or her parent concerning the suspension. This board action and notice of the action may be necessary in those jurisdictions when board action is required for the suspension to be legally effective.

This system has proven to be most efficient and most likely to produce fewer appeals to the courts. It is based upon the student's receiving notice and an opportunity to be heard at the lowest possible administrative level. By following

these simple steps, procedural violations should be minimized, if not eliminated.

SPECIAL PROBLEMS WITH RESPECT TO HEARINGS

Another recurring student discipline problem is that of the unavailable or uncooperative witness. Often, school officials have asked whether affidavits from other students or patrons can be utilized in proving a long-term suspension or expulsion case. Generally, affidavits should not be used, if possible. The affidavits are hearsay, and the person who has written the affidavit is not subject to cross-examination by the student's representative. However, some courts have held that the use of affidavits in student discipline cases does not violate due process and is permissible. These affidavits, however, should only be used when a student or patron declines to provide live testimony. The presentation of live testimony is always preferable.

Drug and alcohol cases present special proof problems. In some cases, the student may allege that the prohibited substance is, in fact, not a drug. In such a case, it may be necessary to test the substance to determine whether it is, in fact, a drug or a narcotic. Usually, local law enforcement agencies are cooperative in assisting in such a determination. The administrator who has seized the alleged drug should give it to a law enforcement agent and secure a receipt. It is suggested that the substance be placed in an envelope, sealed, and signed by the administrator. The envelope should then be given to the law enforcement agent. The administrator can then testify to having given the substance to the law enforcement agent. Likewise, the administrator should note when he or she receives the substance back from the law enforcement agent and replace it in a sealed envelope if it does not come back in the original. The law enforcement agent who did the testing upon the drug should be available to testify at the hearing. Once again, the failure to have such a witness may open the door to a charge of unfairness because a test report is technically hearsay. If, however, the student and his or her parent or guardian agrees that the substance is a prohibited substance, there is no such problem and that fact may simply be stipulated to at the hearing. If the district has a drug policy like the sample policy which makes it a violation to sell, possess, attempt to sell, etc. what the student represents to be a prohibited substance, many of these proof problems can be minimized.

It may prove helpful to have the district's building administrators attend training sessions on the detection and identification of drugs and other controlled substances. Such a session can probably be arranged through the local or state law enforcement agencies.

In many cases, the student and his or her parents do not contest that the student committed the act of which he or she is accused. Rather, they simply wish to argue for a less stringent punishment based upon the student's record, the student's year in school, and other factors. If the student and his or her parent do not wish to challenge the fact that the student committed the act, this fact should be noted on the record. Once that fact is noted, evidence and argument concerning a proper punishment may be presented. There is no need to prove up a case in which the student admits to the acts in question, so long as the admission is made on the record. In the letters which accompany the determinations, this admission or stipulation should be clearly stated.

DISCIPLINE OF HANDICAPPED STUDENTS

Disciplining handicapped students presents a few different considerations than disciplining regular education students. Handicapped students are entitled to two sets of due process procedures. First, a handicapped student is entitled to the same procedural due process described by the court in *Goss v. Lopez* as are other regular education students. Second, handicapped students are entitled to procedural protections contained in the Education of the Handicapped Act, 20 U.S.C. § 401, *et seq.* (EHA) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504).

The EHA and Section 504 prevent a handicapped student from being expelled if the misbehavior is related to the handicapping condition or is the result of an inappropriate placement. The term "related" is very broadly interpreted. The handicapping condition does not have to *cause* the misbehavior; it simply must be related to the misbehavior. The determination of whether the misbehavior is related to a handicapping condition should always be made by a group of persons specially trained and knowledgeable about the

child and his or her handicap rather than disciplinarians. If a link is established, the multi-disciplinary team responsible for determining the child's special education and placement should convene to determine if there is a need to change the education program and/or placement of the child. This team may be the one to make the initial decision whether the link exists. If no link is established, the handicapped student is subject to expulsion; however, the school district may not cease all educational services to the handicapped student during the expulsion period. The extent of education that must be provided during expulsion will depend on state law.

Most states have promulgated rules and regulations for disciplining handicapped students. Some states may have rules that are more restrictive and contain more procedural safeguards than those contained in the EHA and Section 504. Accordingly, before disciplining handicapped students, administrators must refer to state laws and local policies.

According to the EHA and cases interpreting the EHA, any removal from educational services in the student's individual education plan for more than ten (10) days is considered a change of placement and implicates certain procedural protections for the handicapped student, regardless of whether the removal is labelled an expulsion, a suspension, or a removal to an alternative educational setting. A change in placement cannot be effected without prior notice to the parent and the convening of a meeting of a multi-disciplinary team knowledgeable about the child of which the parent is a member. The team should consider whether the misbehavior is related to the handicapping condition or the result of an inappropriate placement. If the answer is yes to either, the team should adjust the child's program and/or placement accordingly. If the answer is no to both, discipline may proceed so long as the student gets the due process given to regular education students and the team actually makes the change of placement. In the event the parent disagrees with the decision of this team, the parent has the right to institute an impartial due process hearing to challenge the team's decision.

Under Section 1415(e) of the EHA, known as the "stay-put" provision, during the pendency of an appeal of a team decision through the impartial due process hearing procedure, the handicapped student must remain in his or her then current educational placement unless the parent and the state or local educational agencies otherwise agree. The stay-put provision is often implicated when disciplining handicapped students if the proposed removal exceeds ten days, the team determines the misbehavior is not related to the handicapping condition and is not the result of an inappropriate placement, and the parent objects and asks for a due process hearing. During the pendency of the hearing, the child must remain in the same placement in which he or she was placed in prior to the disciplinary action.

The stay-put provision prohibits school districts from unilaterally excluding handicapped students from the classroom even for dangerous or disruptive conduct during the pendency of an appeal. *Honig v. Doe, supra.* In *Honig*, two emotionally disturbed students were suspended indefinitely for violent and disruptive behavior relating to their disabilities, pending completion of expulsion proceedings. The school district attempted to persuade the Court that the stay-put provision contained a "dangerousness" exception which would enable the school district to exclude the students who were considered dangerous, despite the existence of the stay-put provision. The Court disagreed and held that a child's placement may not be changed during any complaint proceedings; however, a school district is not precluded from using normal procedures for dealing with children who endanger themselves or others. The procedures suggested by the Court included: use of study carrels, time-outs, detentions, restrictions of privileges, etc. Additionally, the EHA does not prevent a school district from temporarily removing a handicapped student from school for up to ten school days.

Moreover, if the student is considered truly dangerous to himself or herself or others, and the parent refuses to permit the disciplinary action that constitutes the change in placement, a school district may seek an injunction from a court enjoining a dangerous handicapped student from attending school. An injunction will be granted only if the school district shows that the student poses a genuine threat to himself or herself or others if returned to the current placement.

In summary, handicapped students are subject to disciplinary action as are regular education students. Handicapped students are, however, entitled to the procedural safeguards contained in the EHA and Section 504 in addition to

constitutional safeguards. As such, school administrators are cautioned to refer to state law and local policies before imposing discipline. Although these procedural safeguards may inhibit a district from withholding all educational services and unilaterally changing students' placement, a school district may avail itself of the jurisdiction of a court to enjoin a handicapped student from attending school if the student is dangerous to him or herself or to others.

CONCLUSION

Each student discipline case must be handled on its own merits. The circumstances of each may dictate a different or unique approach. However, the guidelines and suggestions contained in this article should help to assure that the student is treated in a fair manner and that the learning environment is secured and maintained. As noted previously, courts appear to focus more on the fair application of rules not on their substance. If fundamental fairness is observed, a school district should encounter fewer problems in the implementation of its discipline policies.

LISTING OF CASES AND ARTICLES ON STUDENT DISCIPLINE

1. *Corporal Punishment*

   A. *Hall v. Tawney*, 621 F.2d 607 (4th Cir. 1980) (upheld an attack to corporal punishment on Eighth Amendment and procedural/substantive due process grounds).

   B. *Smith v. West Virginia State Board*, 295 S.E.2d 680 (W.Va. 1982).

   C. Hudgins and Vacca, *Law and Education: Contemporary Issues and Court Decisions*, pp. 292-296 (1985).

   D. Henderson, *Constitutional Implications Involving the Use of Corporal Punishment in the Public Schools: A Comprehensive Review*, 15 J. Law & Educ. 255 (1986).

2. *Due Process*

   A. *In re Gault*, 387 U.S. 1 (1967).

   B. *Wood v. Strickland*, 420 U.S. 308 (1975) (individual liability of school officials for alleged due process violations in disciplinary proceedings).

   C. *Carey v. Piphus*, 435 U.S. 247 (1978).

   D. *Keough v. Tate*, 748 F.2d 1077 (5th Cir. 1984) (pre-suspension due process requirements).

   E. *Davis v. Churchill County School Board*, 616 F. Supp. 1310 (D. Nev. 1985).

   F. J. Horner, *Disciplinarian Hearings and Due Process*, Principal's Handbook—Current Issues in School Law, National Organization of Legal Problems in Education, pp. 29-33 (1989).

3. *Freedom of Expression*

   A. D. Schimmel, *Lewd Language Not Protected: Bethel School District v. Fraser*, 33 Educ. Law Rptr. 999 (1986).

   B. D. Schimmel, *Censorship of School-Sponsored Publications: An Analysis of Hazelwood v. Kuhlmeier*, 45 Educ. Law Rptr. 941 (1988).

   C. *Karp v. Becher*, 477 F.2d 171 (9th Cir. 1973).

   D. *Dodd v. Rambis*, 535 F. Supp. 23 (S.D. Ind. 1981).

   E. *Miller v. California*, 413 U.S. 15 (1973) (definition of obscenity).

   F. *Spanley v. Northeast Independent School District*, 462 F.2d 960 (5th Cir. 1972).

4. *Search and Seizure*

   A. *Cason v. Cook*, 810 F.2d 188 (8th Cir. 1987).

   B. *Martens v. District No. 220*, 620 F. Supp. 29 (N. D. Ill. 1985).

   C. *Zamora v. Pomeroy*, 639 F.2d 662 (10th Cir. 1981).

D. *Horton v. Goose Creek Independent School District*, 690 F.2d 470 (5th Cir. 1982), *rehrg.*, 693 F.2d 524 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983) (whether a dog sniff on property such as lockers or cars constitutes a search).

E. *Doe v. Renfrow*, 631 F.2d 91 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981) (sniffing of students by drug dogs).

5. *Special Education*

A. J. Arnold, *Discipline and the Handicapped Student*, Principal's Handbook—Current Issues in School Law, National Organization of Legal Problems in Education, pp. 61-69 (1989).

B. *Stuart v. Nappi*, 443 F.Supp. 1235 (D.Conn. 1978).

C. *Doe v. Koger*, 480 F.Supp. 225 (N.D. Ind. (1979).

D. *School Board v. Malone*, 762 F.2d 1210 (4th Cir. 1985).

E. *Jackson v. Franklin County School Board*, 765 F.2d 535 (5th Cir. 1985).

APPENDICES

APPENDIX A

SAMPLE SUSPENSION POLICY

STUDENT DISCIPLINE: SUSPENSIONS

Grounds

A student may be suspended from school when the student:

- Violates District or school policies or regulations. These policies and regulations apply to any student who is on school property, who is in attendance at school or at any school sponsored activity or whose conduct at any time or any place interferes with or obstructs the missions or operations of the school district or the safety or the welfare of students or employees. This policy contemplates that another policy or policies will contain a listing of specific behaviors, e.g., destruction of school property or the property of students, assault of a school employee or another student, etc. If this is not included in other policies, the listing shall be included here. A sample policy concerning specific behaviors is included as Appendix B. A sample drug and alcohol policy based on Texas law is included as Appendix C.

- Is guilty of conduct which interferes with the maintenance of school discipline.

- Is guilty of conduct which, in the judgment of school officials, warrants the reasonable belief that disruption of school operations will likely result.

- Is guilty of incorrigible conduct, including insubordination, disorderliness, viciousness, immorality, persistent violation of school rules, or persistent misbehavior.

Principal's Responsibility to Maintain Order

Principals are charged with the responsibility of general student conduct and behavior regulations. Such discipline may include suspension from school. The Principal or Assistant Principal shall notify the parent prior to sending the student home during the school day. If the parent cannot be contacted, the student shall be kept at school until the end of the school day. A letter explaining the suspension will be sent home with the student at the end of the school day. A letter shall also be sent to the parent or guardian by mail. (See Appendix D, Specimen Letter #1). (Exception: If the student's continued presence in the school presents a danger to the student or to other persons or property, the student may be summarily suspended from the campus without parent notification.)

Procedures

In the event a student faces suspension, one of the following procedures shall be used:

Short-Term Suspension: (10 School Days or Fewer)

- The Principal or Assistant Principal shall advise the student orally or in writing of the charges.

- If the student denies the charges, the Principal or Assistant Principal shall explain the evidence against the student and give the student an opportunity to present the student's side of the story.

- If, on the basis of this discussion, the official believes the student is guilty of the misconduct charged, and that suspension is the appropriate punishment under the circumstances, the Principal or Assistant

Principal may suspend the student for ten school days or fewer.

In such cases, the Principal or Assistant Principal shall inform the Superintendent, the student and his/her parents or guardians of the circumstances and action taken.

Long-Term Suspension (MoreThan 10 School Days)

Where the alleged misconduct of a student would, if proved, warrant a suspension of more than ten school days, or the remainder of the school term, the following procedure shall be provided prior to the suspension:

Prior to the hearing outlined below, the student may be suspended for up to 10 days if the procedures for a short-term suspension are followed.

Notice of Charges: The student and the student's parent or guardian shall be notified in writing of the specific charges against the student. These charges must be stated clearly enough for the student and the parent to understand the grounds of the charges and to be able to prepare a defense. (See Appendix D, Specimen Letter #2).

Notice of Nature of Testomony and Witnesses: If a hearing is requested, the student and the student's parent or guardian shall be advised of the nature of the evidence against the student and be provided the names of any witnesses whose testimony may be used against the student. (See Appendix D, Specimen Letter #3).

Notice of Hearing: If a hearing is requested the student, the student's parent or guardian shall be notified of the date of a hearing to be held before the Principal within a reasonable time after notice. The date of the hearing may be advanced at the request of the student or postponed on the showing of reasonable grounds. (See Appendix D, Specimen Letter #3).

Notice of Right to Present Evidence: At the time notice of the hearing is given to the student and the student's parent or guardian, they may present witnesses or documentary evidence to rebut the charges against the student. (See Appendix D, Specimen Letter #3).

Impartial Hearing: The student is entitled to a hearing before an impartial administrator. The Principal shall conduct the hearing. If the Principal has had such involvement in the case that the Principal feels he or she cannot be fair and impartial, the Principal shall ask the Superintendent to appoint another administrator to conduct the hearing. (See Appendix D, Specimen Outline #4).

Adult Representation: The student, or his or her parent or guardian, may be represented and/or assisted at the hearing by a lawyer or other adult. A parent or guardian who is unable to attend the hearing may designate another adult to assist the student in the parent's absence. Notification of the representative's identity shall be given in advance of the hearing, or the representative shall furnish evidence of appointment at the time of the hearing.

Right to Present Evidence: At the hearing, the student, parent, attorney or adult representative shall have the right to present witnesses and documentary evidence to refute the charges.

Suspension Order: The decision shall be based exclusively on evidence presented at the hearing. If the evidence supports the charges against the student, a suspension order appropriate to the charges and the facts established may be issued. Written notice of the decision shall be sent promptly to the student, the parent, and the Superintendent's office. (See Appendix D, Specimen Letter #5).

Record: The hearing shall be tape recorded. A written transcript of the recording may be made. When the hearing officer determines it is necessary, a hearing may be recorded by a court reporter.

Reporting to Superintendent: In the event any student is suspended from the District for more than 10 days, the Principal shall make a written report to the Superintendent outlining the facts established at the hearing and the action taken.

Appeals to the Superintendent: The student and his or her parents or guardian shall have the right to appeal his or her suspension to the Superintendent or his or her designee. The Superinten-

dent must be notified of the desire to appeal within five school days after the Principal has rendered a decision. (See Appendix D, Specimen Letter #6). The appeal to the Superintendent or his or her designee will be based upon the record made before the Principal (the tape recording of the hearing, correspondence and any other documents used at the hearing). That is, no new evidence shall be presented to the Superintendent unless good cause can be shown why it was not presented to the Principal. (See Appendix D, Specimen Outline #7). The Superintendent shall render a decision within five school days after he or she receives the notice of appeal. (See Appendix D, Specimen Letter #8).

Appeals to the Board:

- **Alternate One.** *(De novo* Hearing Before Board). The student or his or her parent or guardian has the right to appeal the Superintendent's decision to the board of trustees. The Superintendent must be notified of the desire to appeal within five school days after his or her decision. The hearing before the board shall be conducted as a new hearing in which any evidence may be presented. (See Appendix D, Specimen Letter #9). The hearing shall be conducted in the same manner as the hearing before the Principal. The student and the Administration may agree to present the case to the Board on the basis of the record developed before the Principal and/or Superintendent. (See Appendix D, Specimen Outline #10). The Board shall render its decision by a majority vote of those members in attendance. (See Appendix D, Specimen Letter #11).

- **Alternate Two.** (Hearing of the Record). The student or his or her parent or guardian has a right to appeal the Superintendent's decision to the Board of Trustees. The Superintendent must be notified of the desire to appeal within five school days after his or her decision. The hearing before the Board shall be on the record developed before the hearing officer plus the decision of the Superintendent or his or her designee. No new evidence shall be received by the Board. (See Appendix D, Adoption of Specimen Letter #6 and Specimen Outline #7). The Board shall render its decision by a majority vote of those members in attendance. (See Appendix D, Specimen Letter #11).

Action by Board When No Appeal

If a student who is suspended for more than 10 school days does not appeal the suspension to the Superintendent or the Board, the Superintendent shall recommend to the Board that it enter an order suspending the student in accordance with the order of the Principal or Superintendent. (See Appendix D, Specimen Order #12).

Summary Suspension

Immediate suspensions of a student may be imposed by the Principal or the Superintendent without prior notice and hearing when the student's continued presence in school poses a continuing danger to the student or to other persons or property, or an ongoing threat of disruption of the academic process. In such cases, the necessary notice of the date and place of the subsequent hearing shall be given to the student and to the parents or guardian of the student. Such hearing shall be held within ten days after the student's removal from school by the Principal or the Superintendent. The Board may continue the Principal's or the Superintendent's summary suspension or take other action as the facts warrant.

EMERGENCY REMOVAL SUSPENSION, AND EXPULSION OF HANDICAPPED STUDENTS

Emergency Removal of Handicapped-Students

Handicapped students may be removed from class or school for health, safety or welfare reasons. These reasons include, but are not limited to, the fact the student is under the influence of alcohol or drugs, highly agitated, or suffering from any other condition which temporarily threatens his or her welfare, other individuals' welfare, or the efficient operation of the school.

Such emergency removal shall not exceed five consecutive school days. Any student who is removed from school on an emergency basis from school and who is in a condition that threatens his own welfare or the welfare of others must be released to the students' parent, a representative of the parent, or other proper authority including but not limited to law enforcement officers and medical personnel. Removal under this section is intended to be used in emergency situations only and consecutive five school day removals are prohibited unless the Admission, Review and Dismissal Committee (ARD) determines that the student imposes an immediate threat to the safety of himself or herself or others, or disrupts the safety of the learning environment. If the ARD Committee determines that a student is dangerous, but the parents appeal the decision pursuant to the Education of All Handicapped Children's Act (EHA) procedures and refuse to permit a change of placement, the school must obtain immediate injunctive relief from a state or federal court in order to remove the student for more than ten consecutive days. The district shall make reasonable efforts to notify the parent prior to removing a student from school premises on an emergency basis. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

Short Term Suspension or Removal to Alternative Education Program of Handicapped Students

Handicapped students may be suspended in the same manner as non-handicapped students for a period not to exceed six school days in any one semester or removed to an alternative education program for a period not to exceed ten consecutive school days in one semester. Handicapped students cannot be removed to an alternative education program for more than ten days unless the ARD Committee first determines whether the alleged behavior in question was related to the handicapping condition. If the ARD Committee determines there is a connection, it must also determine what action is appropriate. The term of a handicapped student's removal to an alternative education program shall be assessed in accordance with state and federal law. However, removal for more than ten consecutive school days may be effected only through ARD Committee action, subject to the parents' right to appeal. Any disciplinary removal of a handicapped student for more than six days per semester if the child is removed to his or her home must be treated as an expulsion.

No ARD Committee meeting will be required for those handicapped students for whom short-term suspension or removal to an alternative education program has been included in the discipline plan attached to their IEPs. In such cases, the IEP discipline plan will be implemented if the student has engaged in conduct for which the discipline plan allows short-term suspension or removal. The student shall be given oral or written notice of the charges, an explanation of the evidence supporting the charges, and an informal opportunity to respond to and rebut the charges. The Administration will make and document efforts to notify the parent prior to the suspension. The ARD Committee will determine the nature and extent of services, if any, to be provided at home for students who receive short-term suspensions.

Expulsion of Handicapped Students

Expulsion may be effected for a handicapped student who is engaging in conduct which would warrant such action for a non-handicapped student only if the ARD Committee determines the misconduct is not related to the handicapping condition or inappropriate placement. The exclusion of a handicapped student from his or her current placement pending appeal of an expulsion, may not exceed ten days without ARD Committee, action subject to the parents' right to appeal under the EHA and the stay-put provisions of 34 C.F.R. 300.513 to determine appropriate services in the interim. In determining whether a student's disruptive behavior was related to the student's handicapping condition, the ARD Committee shall base its decision on currently effective evaluation and assessment data and on review of the current IEP documentation rather than on established eligibility or previous Committee decisions. The Committee shall consider whether the student's behavior indicates the need

for new assessment or evaluation data. Unless the parents agree otherwise, the student must be returned to his or her current placement after ten days while additional assessments are being conducted. The ARD Committee shall determine the instructional-related services to be provided during the time of expulsion. The student's IEP shall include goals and objectives designed to assist in returning the student to school and preventing significant regression. If the ARD Committee determines that the student's disruptive behavior is related to the handicapping condition or inappropriate placement, the student shall not be expelled. If the disruptive behavior on the part of the student indicates an inappropriate placement, the ARD Committee shall review the placement and recommend alternatives. If the ARD Committee determines that this behavior was related to the handicapping condition, then the ARD Committee shall either rewrite the IEP to address the behavioral and educational needs of the student; or, when appropriate, consider the extension of an emergency removal.

Suspension and Expulsion of Handicapped Students

Except for emergency removals, handicapped students shall remain in the current placement pending action on a suspension or expulsion recommendation, unless the parents and the administration agree otherwise. A handicapped student for whom expulsion has been recommended is entitled to all due process rights available to a non-handicapped student for whom suspension and/or expulsion has been recommended. In addition, the handicapped student is entitled to all due process procedures available to a handicapped student under the EHA and applicable state policies and procedures.

Suspesion and Special Referral

The District is not required to refer for special education assessment and evaluation a regular student who has been suspended for violation of school rules and district policy to determine if such a student might be handicapped. A suspended regular student is not entitled to reinstatement to classroom and campus privileges pending any assessment and evaluation which is to be made during the term of the student's suspension.

APPENDIX B – SAMPLE DISCIPLINE POLICY

The following activities are prohibited. Any student who engages in any of these activities is subject to discipline, which may include suspension for the remainder of the school year. This policy applies to any student who is on school property, who is in attendance at school or at a school sponsored activity or whose conduct at any time or in any place interferes with or obstructs the missions or operations of the school district or the safety or welfare of students or employees.

- Cutting, defacing, or in any way damaging property, real or personal, belonging to the district, its employees, visitors or other students.
- Defiance of the authority of the teacher, principal, bus driver, supervisor or other school employee.
- Stealing or forgery, or the attempt to do either.
- Possession of any weapon, knife, gun, instrument or article (including fireworks and instruments of the martial arts) that might be injurious to a person or property.
- Violation of the district's drug and alcohol policy.
- Use or possession of tobacco products (including, but not limited to, snuff, dip, chewing tobacco, cigarettes, cigars, pipe tobacco, etc.).
- Participating or engaging in any activity which interferes with or disrupts the educational process.
- Physically assaulting or causing bodily injury to an employee of the district, a visitor or another student. This includes nonconsensual touching and fighting.
- Verbally assaulting or threatening an employee of the district, a visitor or another student.
- Violation of public criminal or civil law or District or building regulations.
- Scholastic dishonesty which includes, but is not limited to, cheating on a school assignment, plagiarism and collusion.

  — Cheating on a test includes:

  - copying from another student's test paper;
  - using material during a test which is not authorized by the person giving the test;
  - collaborating with another student during the test without authority;
  - knowingly using, buying, selling, stealing, transporting or soliciting in whole or part the contents of an unadministered test;
  - substituting for another student or permitting another student to substitute for one's self, to take a test;
  - bribing another person to obtain a test that is to be administered; or
  - securing copies of the test or answers to the test in advance of the test.

  — Plagiarism means the appropriation of another's work and the unacknowledged incorporation of that work in one's own written work for credit.

— Collusion means the unauthorized collaboration with another person in preparing written work offered for credit.

- Throwing objects, outside supervised school activities, that can cause bodily injury or damage property.

- Leaving school grounds when not permitted to do so.

- Directing profanity, vulgar language, obscene gestures or sexual innuendo toward other students or school personnel.

- Failing to comply with lawful directives or rules issued by school personnel or school policies, rules and regulations.

- Committing robbery or theft, or the attempt to do so, of any property belonging to the district at any time or of any property belonging to an employee or other student.

- Engaging in misconduct, as defined by district policies and regulations, on school buses or at bus stops.

- Committing or attempting extortion, coercion, or blackmail, i.e., obtaining money or other object of value from an unwilling person, or forcing an individual to act through the use of force or threat of force.

- Engaging in verbal abuse, i.e., name calling, ethnic or racial slurs, or derogatory statements addressed publicly to others, that may precipitate disruption of the school program, incite violence or otherwise detract from the educational mission of the district.

- Lying or the giving of false information, either verbally or in writing, to a school employee.

- Tampering with, changing, or altering records or documents of the school district by any method including, but not limited to, computer access or other electronic means.

- Gambling.

- Hazing as defined by state law.

- Engaging in immoral conduct. Immoral conduct is conduct which the Board determines is not in conformity with the accepted principles of right and wrong behavior and which is contrary to the moral standards of the community.

APPENDIX C — SAMPLE DRUG AND ALCOHOL POLICY

Reason for Policy

Because the use of drugs, alcohol, and other chemicals among young people has become a major problem in our country and because the use and availability of these substances on school campuses interfere with the educational process, this policy is being adopted and implemented. The policy is designed to help eradicate the influence of drugs, alcohol, and other chemicals within the school environment. It is designed to act as punishment, deterrent, and protection for the students.

When and Where Applicable

This policy applies to any student who is on school property, who is in attendance at school or at a school sponsored activity or whose conduct at any time or in any place interferes with or obstructs the missions or operations of the school district or the safety or welfare of students or employees.

Prohibited Activities

It shall be against school policy for any student:

1. To sell, supply, or give, or attempt to sell, supply, or give to any person any of the substances listed in this policy or what the student represents or believes to be any of the substances listed in this policy.

2. To possess, procure or purchase, to attempt to possess, procure or purchase, to be under any degree of influence of (legal intoxication not required), or to use or consume or attempt to use or consume, the substances listed in this policy or what is represented by or to the student to be any of the substances listed in this policy or what the student believes is any of the substances in this policy.

Prohibited Substances and Penalties

Any student engaging in the prohibited activities listed above with respect to the following prohibited substances shall be subject to the penalties set out below:

1. Alcohol or any alcoholic beverage.

   Penalty: 1st offense: (state)

   Any subsequent offense: (state)

2. Any controlled substances or dangerous drugs as defined by (cite applicable state law on controlled substances) or as defined by Section 812, Schedules I-V, of Title 21, United States Code, Section 801, *et seq.*, including but not limited to marijuana, any narcotic drug, any hallucinogen, any stimulant, or any depressant.

   Penalty: 1st offense: (state)

   Any subsequent offense: (state)

3. Any abusable glue or aerosol paint as defined by (cite applicable state law) or any other chemical substance, including but not limited to, lighter fluid and reproduction fluid, for inhalation.

   Penalty: 1st offense: (state)

   Any subsequent offense: (state)

4. Any prescription or non-prescription drug, medicine, vitamin or other chemical including, but not limited to aspirin, other pain relievers, stimulants, diet pills, multiple or other type vitamins, pep pills, "nodoze" pills, cough medicines and syrups, cold medicines, laxatives, stomach or digestive remedies, depressants and sleeping pills not taken in accordance with the authorized use policy.

   Penalty: 1st offense: (state)

   Any subsequent offense: (state)

Authorized Use

Any student whose parent or guardian requests that he or she be given any prescription or non-prescription medicine, drug, or vitamin shall follow the procedures of Policy (state reference) which requires that the school nurse dispense such medicine, drug, or vitamin to the student.

APPENDIX D

SPECIMEN LETTERS, ORDERS AND OUTLINES

Specimen Letter #1

NOTICE OF SUSPENSION FOR UNDER TEN SCHOOL DAYS

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

Your child, _____(name)_____, has been suspended from _____(name)_____ School for (number) days for the following misconduct and/or violation of District or school rules or regulations:

(Describe)

Your child has had the charges of misconduct explained to him or her and has been given the opportunity to disagree with the charges and the suspension. It has been determined that your child committed the act(s) in question and should be suspended.

Your child may return to school on (date). Make-up work (will) or (will not) be given for this time. While suspended, your child may not come on any school campus except with you for the purpose of discussing conduct. If you have any questions, please call.

Sincerely yours,

_____
Principal

cc: The Superintendent

Specimen Letter #2

NOTICE OF PROPOSED SUSPENSION FOR MORE THAN TEN SCHOOL DAYS

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Re: Proposed Suspension of
(name) from
(name) School

Dear (Parent or Guardian),

I regret to inform you that your child, (name), has been temporarily suspended from school pending a hearing to be conducted before me in the Principal's office. From the investigation, it was determined that your child was involved in the following misconduct and/or violation of District or school rules or regulations:

(Describe)

The proposed length of suspension is (time).

Your child is entitled to a hearing to determine if he/she violated the rules in the manner stated above and whether he/she should be suspended for more than ten school days, not to extend beyond the current school term. If you desire a hearing, please notify the Principal's office at (phone) within five (5) days; that is, by (date). If you request a hearing, it will be scheduled as soon as practicable at a mutually convenient time. Your child will remain on temporary suspension until the hearing is held. If you do not request a hearing within five days, you will waive the right to a hearing, and the Principal will enter an order suspending your child for more than ten school days if he/she deems it appropriate.

Please be advised that at a hearing your child may be represented by you, another adult, or an attorney and may seek to refute any allegations of misconduct. If he/she is represented by someone other than yourself, please advise the Principal prior to the hearing.

At a hearing, you and your child may present any witnesses or documentary evidence in an effort to refute the charges of misconduct and on the issue of a proper punishment, if it is determined that the misconduct occurred.

If you request a hearing, the School's Administration will provide you with a list of the witnesses who will testify on behalf of the Administration, together with a short description of their testimony. Documents may also be used at the hearing. If so, the documents will be provided to you prior to the hearing.

A COPY OF THE SCHOOL DISTRICT POLICIES REGARDING DISCIPLINE PROCEDURES IS ATTACHED TO THIS LETTER. PLEASE REVIEW THESE POLICIES. If you have any questions regarding the reasons for the proposed suspension or anything connected with the hearing, please feel free to call me.

Sincerely yours,

_____

Principal or Hearing Officer

cc: The Student

Specimen Letter #3

NOTICE OF HEARING AND WITNESS LETTER (PRINCIPAL)

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

You have requested a hearing concerning the proposed suspension of (name) from school for misconduct and/or violation of District or school rules or regulations, specifically, (specific alleged misconduct).

Pursuant to your request, a hearing has been scheduled for (month) (day), (year) at (time) at (location of hearing). If this time for the hearing is not convenient, please do not hesitate to let me know so it can be rescheduled.

At the hearing, you will have the right to present any documentary or other evidence and any witnesses to refute the charges of misconduct. You may also present evidence and witnesses with respect to a proper punishment if the student is found to have committed the alleged offense(s). The Administration may present the following witnesses:

1.
(Name of witness), (nature of testimony).

2.
(Name of witness), (nature of testimony).

If additional witnesses are to be called by the Administration, you will be notified as soon as possible. Rebuttal witnesses may also be presented by the Administration, but their identity and the nature of their testimony cannot be determined at this time. Documentary evidence may also be submitted. The documents which may be used (are attached) (will be presented to you prior to the hearing).

The hearing will be conducted as an informal hearing, and no strict rules of evidence will apply. However, the testimony or documents must be relevant and not hearsay. The Principal will rule on any objections to the presentation of witnesses or evidence that may be made by you or by the Administration. The Administration's case in support of suspension will be presented by (name), (title) unless you have an attorney. You and your child may be represented by another adult or an attorney. If you are to be represented by an attorney, the school district's attorney will present the Administration's case. If you will have another adult or an attorney represent your child, please let me know prior to the hearing so the school district's attorney can be present.

A COPY OF THE SCHOOL DISTRICT POLICIES REGARDING DISCIPLINE PROCEDURES IS ATTACHED TO THIS LETTER. PLEASE REVIEW THESE POLICIES. If you have any questions about the procedures to be followed at the hearing, the nature of the charges, or any other aspect of this matter, please do not hesitate to contact me.

Sincerely yours,

_____

Principal or Hearing Officer

cc: The Student

Specimen Outline #4

OUTLINE OF HEARING FOR STUDENT BEFORE THE PRINCIPAL OR HEARING OFFICER

PRINCIPAL OR HEARING OFFICER: Today we are here for a hearing in the case of (name). (Name) a (classification) grade student at the (name) School, is charged with (describe). It is proposed that he/she be expelled from school for the remainder of the term (or other time).

Both the Administration and the student will be given an opportunity to present testimony with respect to the incident involved in this case, any circumstances attendant to it, and any punishment that might be rendered if it is determined that (name) committed the act(s) in question. This procedure may be handled in one or two parts. In the first stage, only the issue of whether the student committed the acts of which he/she is charged will be considered. I will then make a decision as to whether the student is found to have committed the acts, then punishment will be considered. The alternative is that I can consider whether the student committed the misconduct and the punishment at the same time. (Student's representative), which way do you want to do it? (Decide which procedure will be followed).

(Name) is represented by an attorney, (name). The Administration will be represented by (name). For the record, the following people are present:
(list them).

Each side will have a chance to present its witnesses and documentation in support of its position. This proceeding is being recorded to make a record of what transpires. The witnesses will be sworn in by (name), a notary public. This will be conducted as an informal hearing, and no strict rules of evidence will apply; however, the testimony must not be hearsay, and it must be relevant. The attorneys may make such objections to testimony or documentation as they see fit and I, as Hearing Officer, will consider such objections.

As noted, the student is charged with (describe). The student, through his parent, was notified of the charges and the time and date of this hearing. The Administration must show that the charges are supported by the evidence. The charges must be supported only by the evidence heard here today.

The Administration will present its case first, followed by the presentation of the student. Each of you may make a short opening statement if you wish.

(Opening statement by the Administration's representative.)

(Opening statement by the student's representative.)

PRINCIPAL OR HEARING OFFICER: (Administration's Representative), you may present your witnesses.

(The Administration's representative presents witnesses.)

PRINCIPAL OR HEARING OFFICER: (Student's Representative), you may present your witnesses.

(The student's representative presents witnesses.)

PRINCIPAL OR HEARING OFFICER: (Administration's Representative), do you wish to present any rebuttal evidence?

(Presentation of rebuttal evidence by the Administration's representative.)

PRINCIPAL OR HEARING OFFICER: (Student's Representative), do you wish to present anything further?

PRINCIPAL OR HEARING OFFICER: (Do either of you wish to make closing statements?)

(Closing by Administration's representative.)

(Closing by Student's representative.)

PRINCIPAL OR HEARING OFFICER: I will now deliberate upon the evidence I have heard and will render a decision as quickly as possible. (The decision can be given verbally and followed up in writing, or the decision can be given in writing promptly after the hearing.)

Specimen Letter #5

NOTIFICATION OF THE PRINCIPAL'S OR HEARING OFFICER'S DECISION AND THE RIGHT OF APPEAL TO THE SUPERINTENDENT

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

On (date), a hearing was held regarding the alleged misconduct of (name). Specifically, it was (specific alleged misconduct). At the hearing, you were afforded the opportunity to present any documentary or other evidence and present witnesses to refute the charge(s) and evidence of misconduct and to present evidence concerning a proper punishment if the student was found to have committed the offense(s).

Based upon all the evidence presented, I have made the following findings:

(Here specific findings of fact as to what happened should be listed.)

Furthermore, based upon my consideration of the offense(s) and all the other factors involved, the punishment shall be as follows:

(Punishment to be administered)

You have the right to appeal this decision to the Superintendent. If you desire such an appeal, please inform me or the Superintendent in writing within five (5) days from the date of this letter. A hearing will be scheduled as soon as practicable. The student will remain on suspension pending such a hearing. If you have any further questions concerning my decision, the procedures to be following, or any other aspect of this matter, please do not hesitate to call me.

Sincerely,

_____
Principal or Hearing Officer

cc: The Superintendent

Specimen Letter #6

NOTICE OF HEARING BEFORE THE SUPERINTENDENT

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

You have appealed the decision of the Principal (or Hearing Officer) suspending your child (name) for the remainder of the term (or other time) to me. Accordingly, a hearing has been scheduled before me (or designee's name) for (month) (day), (year) at (time) at (location).

This hearing will be based upon the record made before the Principal (or Hearing Officer). This record includes a tape recording of the hearing, correspondence, and any other documents used at the hearing before the Principal (or Hearing Officer). No new evidence shall be presented at this hearing unless good cause can be shown why the evidence was not presented to the Principal (or Hearing Officer).

Both you and the Administration will have an opportunity to present argument on the case. Since this is an appeal, you or your representative will go first, followed by a presentation by the Administration's representative.

The Administration's case will be presented by the Principal (or Hearing Officer) (name), (title) unless you' re represented by an attorney or another adult. In such case, the school district's attorney will present the Administration's case. Please let me know prior to the hearing whether you will be represented by an attorney or other adult so the school district attorney can be present if you are so represented.

If you have any questions about the procedures to be followed at the hearing, or the hearing in general, please do not hesitate to contact me.

Sincerely yours,

_____
Superintendent

cc: The Student

Specimen Outline #7

OUTLINE OF THE HEARING BEFORE THE SUPERINTENDENT

SUPERINTENDENT: Today we are here for a hearing in the case of (name). (Name), a (classification) grade student at the (name) School, who has been found by the Principal (or Hearing Officer) with (describe). The Principal (or Hearing Officer) has ordered that he/she be expelled from school for the remainder of the term (or other time).

This hearing will be based upon the record made before the Principal (or Hearing Officer). This record includes a tape recording of the hearing, correspondence, and any other documents used at the hearing before the Principal (or Hearing Officer). No new evidence shall be presented at this hearing before me unless good cause can be shown why the evidence was not presented to the Principal (or Hearing Officer).

(Name) is represented by (name). The Administration will be represented by (name). For the record, the following people are present: (list them). Each side will have an opportunity to present argument on the case. This proceeding is being recorded to make a record of what transpires. Since this is an appeal from the decision of the Principal (or Hearing Officer), the student will present his or her argument based on the record first. This presentation will be followed by the presentation of the Administration's representative. Do any of you have any questions on how the hearing is to be conducted?

SUPERINTENDENT: (Student's representative), you may present your argument based upon the record.

(The student's representative presents his or her argument based upon the record.)

SUPERINTENDENT: (Administration's representative), you may present your argument based upon the record.

(The Administration's representative presents his or her argument based upon the record.)

SUPERINTENDENT: (Student's representative), you may now make any rebuttal argument.

(The student's representative makes rebuttal argument.)

SUPERINTENDENT: I will now deliberate upon the argument I have heard as well as the record itself and render a decision promptly.

Specimen Letter #8

NOTIFICATION OF THE SUPERINTENDENT'S DECISION AND THE RIGHT TO APPEAL TO THE BOARD

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

On (date), a hearing was held in the appeal from the decision of the Principal (or Hearing Officer) concerning the suspension of (name). At the hearing, you were afforded the opportunity to present argument based upon the record of the hearing developed before the Principal (or Hearing Officer). The Administration's representative was then allowed to make argument on the record.

Based upon the evidence presented at the hearing before the Principal (or Hearing Officer) and the arguments made at the hearing before me, I have made the following findings:

(Here specific findings of fact as to what happened should be listed.)

Furthermore, based upon my consideration of the offense(s) and all the other factors involved, the punishment shall be as follows:

(Punishment to be administered should be stated.)

You have the right to appeal my decision to the Board of Education. If you desire to make such an appeal, please inform me in writing within five (5) days of the date of this decision. A hearing will be scheduled as soon as practical. Your child will remain on suspension pending such a hearing. If you have any further questions concerning my decision, the procedures to be followed in an appeal, or other aspects of this matter, please do not hesitate to call me.

Sincerely yours,

_____
Superintendent

cc: The Student

Specimen Letter #9

NOTICE OF BOARD HEARING AND WITNESS LETTER

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

You have requested a hearing concerning the suspension of (name) from school for misconduct. This is an appeal from the decisions of the Principal (or Hearing Officer) and the Superintendent. A hearing before the Board has been scheduled for (date), (year) at (time), at (location of hearing).

The hearing before the Board will be conducted in the same manner as the hearing before the Principal (or Hearing Officer). The procedures outlined in the Principal's letter of (date) will be followed and the same witnesses listed in that letter may testify at the Board hearing on behalf of the Administration. All the documents used at the Principal's hearing, as well as the correspondence and documents which have been sent during the appeals may be used at the Board hearing.

The Administration's case which supports the suspension will be presented by (name), (title) unless you have an attorney. You or your child may be represented by another adult or an attorney. If your child is to be represented by an attorney, the school district's attorney will present the Administration's case. If you will have another adult or an attorney represent your child, please let me know prior to the hearing so the school district's attorney can be present.

If you have any questions about the procedures to be followed at the hearing, the nature of the charges, or any other aspect of this matter, please do not hesitate to contact me.

Sincerely yours,

_____
Superintendent

cc: The Student

Specimen Outline #10

OUTLINE OF THE HEARING BEFORE THE BOARD

BOARD PRESIDENT: Today we are here for a hearing in the case of (name). (Name), a (classification) grade student at the (name) School, is charged with (describe). The Principal (or Hearing Officer), after the hearing, determined that he/she be expelled from school for the remainder of the term (or other time). (Name) appealed to the Superintendent, and he/she also found that the student should be expelled from school for the remainder of the term (or other time).

Both the Administration and the student will be given an opportunity to present testimony with respect to the incident involved in this case, any circumstances attendant to it, and any punishment that might be rendered if it is determined that (name) committed the acts as he/she is charged. This procedure may be handled in one or two parts. We may, in the first stage, consider only the issue of whether the student committed the acts as he/she is charged. We will then vote. If he/she is found to have committed the acts, then we will consider punishment. The alternative is that we can consider whether the student committed the misconduct and the punishment at the same time. (Parent or attorney), which way do you want to do it? (Decide which procedure will be followed.)

(Name) is represented by (name). The Administration will be represented by (name). For the record, the following people are present: (list them).

Each side will have a chance to present its witnesses and documentation in support of its position. This proceeding is being recorded to make a record of what transpires. The witnesses will be sworn in by(name), a notary public.

This will be conducted as an informal hearing, and no strict rules of evidence will apply; however, the testimony must not be hearsay, and it must be relevant. The representatives of the parties may make such objections to testimony or documentation as they see fit and I, as the Board President, will consider such objections. The Board members may ask questions, but no questions may be asked of the Board members.

As noted, the student is charged with (describe). Pursuant to the request by the student's representative, this hearing is being conducted in closed (open) session. The Administration must show that the charges are supported by the evidence. The charges must be supported by the evidence. The charges must be supported only by the evidence heard here today. I will now poll the Board to determine if each member can make a fair and impartial decision based only on the evidence heard tonight at this hearing. (Ask each member.)

The Administration's representative will present his or her case first, followed by the presentation of the student's representative. (This hearing will be a closed hearing, with any vote being taken in open session.) Each of you may make a short opening statement if you wish.

(Opening statement by the Administration's representative.)

(Opening statement by the student's representative.)

BOARD PRESIDENT: (Administration's representative), you may present your witnesses.

(The Administration's representative presents witnesses.)

BOARD PRESIDENT: (Student's representative), do you wish to present any rebuttal evidence?

(The student's representative presents witnesses.)

SUPERINTENDENT: (Administration's representative), do you wish to present any rebuttal evidence?

(Presentation of rebuttal evidence by the Administration's representative.)

BOARD PRESIDENT: (Student's representative), do you wish to present anything further?

(Further presentation by the student's representative.

BOARD PRESIDENT: Do either of you wish to make closing statements?

(Closing by the student's representative.)

BOARD PRESIDENT: We will now deliberate upon the evidence we have heard and will render a decision as quickly as possible. (The Board would like to deliberate alone, i.e., without anyone present except the Board members. (Student's representative), do you have any objection to that procedure? If you do, please say so and we will abide by it. Any vote will, as required by law, take place in open session.

BOARD PRESIDENT: The Board will now deliberate. If the Board feels the charges are supported by the evidence, it may so find and the student be suspended or other appropriate measures taken.

BOARD VOTE if the one step process is used.

(Did not violate)

A. I move that we find that (name) did not violate the district's rules as alleged and that he/she should not be punished; or,

B. I move that we find that (name) violated the district's rules as alleged and that he/she should be punished by (describe).

BOARD VOTE if the two step process is used.

(Did not violate)

A. I move that we find that (name) did not violate the district's rules as alleged and that he/she should not be punished; or,

(Did violate)

B. Motion one. I move that we find that (name) violated the District's rules as alleged.

C. Motion two. I move that (name) be punished by being (describe).

BOARD PRESIDENT: The parties will be promptly advised in writing of the decision. (A letter should be prepared for the Board President's signature, such as specimen letter #11.)

Specimen Letter #11

SAMPLE LETTER NOTIFYING THE STUDENT OF THE BOARD OF EDUCATION'S DECISION

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

On (date), a hearing was held before the Board of Education regarding the alleged misconduct of (name). Specifically, it was alleged that (specific alleged misconduct).

At the hearing, you were afforded the opportunity to present any witnesses and to present any documentary or other evidence to refute the charge(s) and evidence of misconduct and to presents evidence concerning a proposed punishment if the student was found to have committed the offense(s).

Based upon all the evidence presented, the Board voted as follows:

(Action taken by Board: i.e., The Board found that the student did or did not commit the act(s) in question and what punishment, if any, was found appropriate.)

(If a violation was found and punishment imposed, state law will determine whether further appeals may be taken. If the right to a further appeal does exist, then a conclusion similar to the following may be used:

(name) may return to school on (date). Please contact (date) to arrange for (name) to return at that time)

Very truly yours,

_____
Board President

cc: The Student

Specimen Order #12

ORDER OF THE BOARD AND NOTIFICATION OF THE DECISION OF THE BOARD WHERE NO APPEAL MADE TO THE BOARD

Hand Delivered or
Certified Mail
Return Receipt Requested

(Date)

(Parent or Guardian)
(Address)

Dear (Parent or Guardian),

On (date), a hearing was held before the Principal (or Superintendent) regarding the alleged misconduct of (name). The Principal (or Superintendent) found that (name) had violated the policies of the District as alleged and was suspended for the remainder of the term (or other time).

There was no appeal of the decision of the Principal (or Superintendent) to the Board, so the Superintendent recommended to the Board that it enter an order suspending the student in accordance with the order of the Principal (or Superintendent). On (date), the Board considered the recommendation of the Superintendent and entered an order suspending (name) for the remainder of the term (or other time).

This letter is notice to you of the action of the Board. If you have any questions concerning this action, please notify me or the Superintendent.

Sincerely yours,

_____
Board President

cc: The Student

Have You Heard About the NSBA Council of School Attorneys Most Recent Monographs?

Take a moment to review the Council's recent publications. To place an order, please complete the order form on the next page.

Religion, Education, and the U.S. Constitution edited by Naomi Gittins. This publication discusses legal issues concerning religion and public schools such as accommodating employee religious beliefs, wearing of religious garb, curriculum content including textbook challenges, school prayer/moment of silence, holiday observances, equal access, home schooling, and much more. 50 pages, Direct Affiliates/ Council Members-$20, Non-members- $25. ISBN 0-88364-153-4

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Sexual Harassment in the Schools : Preventing and Defending Against Claims (available June 1990) edited by Naomi Gittins. This comprehensive monograph reviews the most current laws affecting sexual harassment of students and employees in the school setting. You'll receive recent EEOC guidelines and regulations, sample policies, as well as practical information to help you develop your own preventive policies. 40 pages, Direct Affiliates/Council Members-$20, Non-members- $25. ISBN 0-88364-157-7

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Organization _____

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Authorized Signature Exp. Date

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Name _____

Title _____

Organization _____

Street Address _____

City _____ State _____ Zip _____

Phone (_____) _____

❒ Bill me using P.O. Number _____

❒ My district is an NSBA Direct Affiliate, DA # _____

THE NATIONAL SCHOOL BOARDS ASSOCIATION'S COUNCIL OF SCHOOL ATTORNEYS

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To learn how you can join the Council's national network, complete the information request form below, or call (703) 838-6722 and ask for the Council of School Attorneys.

Membership Information Request

Please send me membership information for the NSBA Council of School Attorneys.

Name _____

Law Firm _____

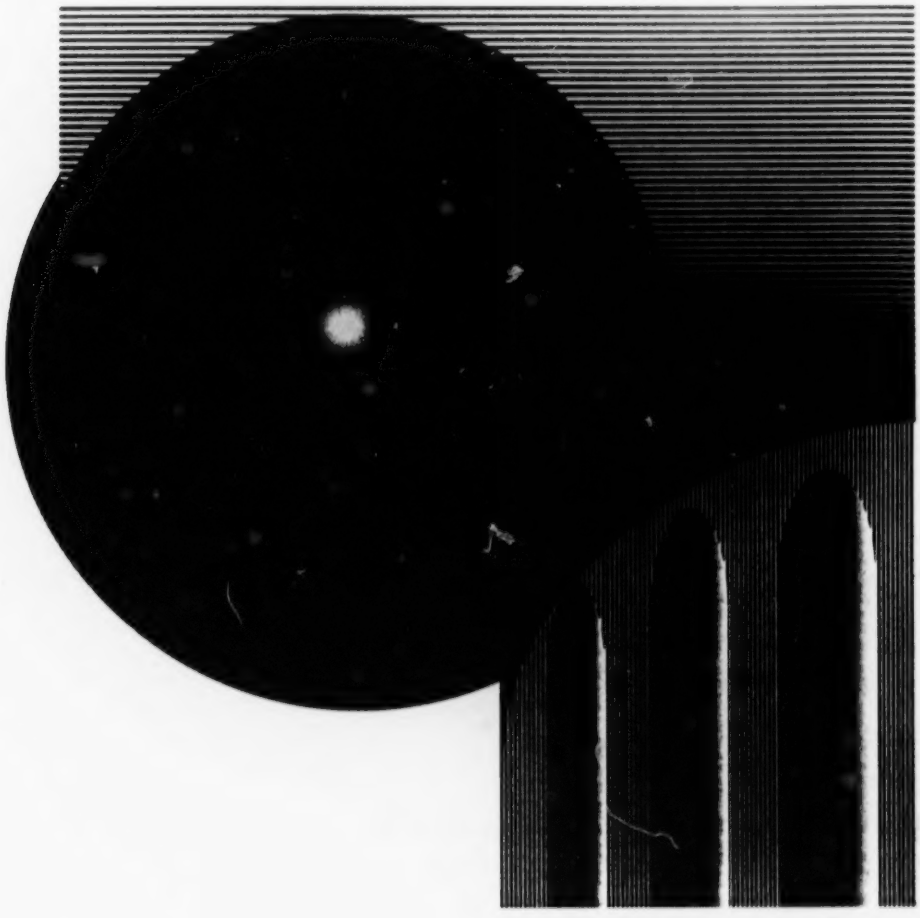
Address _____

City/State/Zip _____

Office Phone _____

Please return completed form to:
National School Boards Association
Council of School Attorneys
1680 Duke Street
Alexandria, Virginia 22314

NOTES



National School Boards Association
Council of School Attorneys
1680 Duke Street
Alexandria, Virginia 22314
(703) 838-6722